

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

United States Patent No. 5,784,808 Issued: 28 July 1998

Inventor: Stan Hockerson, a U.S. citizen, of Albuquerque, NM

Assignee: Hockerson-Halberstadt, Inc. (a Louisiana corporation)

FOR: "Independent impact suspension athletic shoe"

ATTORNEY DOCKET NO.: A09027US (99413.1)

Supplemental Declaration of Richard E. Backus

This declaration is supplemental to my Declarations of 18 April 2009 and 4 March 2009 and addresses specifically the issues raised in the Request for Information dated 13 August 2009.

(A) The docketing error, however it occurred, was the cause of the delay in payment of the 2nd maintenance fee;

The reason that the second maintenance fee was not paid was a result of a docketing error that occurred in my docketing system. I believe that the cause of the error was that the reminder for the second maintenance fee was deleted from my docket as a result of a computer error of some sort. I am the only individual that handles my docketing system, and therefore, the error likely occurred through my actions. I would not have deliberately deleted the reminder, but I cannot be sure how the reminder was deleted.

While I do not know exactly how the error occurred in deleting the records of maintenance fee due dates for patent 5,784,808, there are several possible explanations. One possibility could have occurred at the time I deleted the 3.5 year due date record after that maintenance was paid to the PTO. In doing so, I could have inadvertently selected all three records (3.5, 7.5 and 11.5 year due dates) and then hit the delete button so all three were discarded. Another possible explanation could have been when a patent for another client had expired (such as by having that client decide to not pay a maintenance fee) and then when I went into the database to delete the records for such other patent I mistakenly selected and deleted the ones for HHI's patent 5,784,808. A third possibility is that there was simply a computer error, which caused the docket reminders to be absent from my docket. While I am unable to

specifically determine how the reminders about the maintenance fees for HHI's patent 5,784,808 disappeared from my docket, I am able to state that their absence from my docket is the proximate cause for the 2nd maintenance fee not being paid, and that their absence from my docket was a computer error. The error that occurred in my docketing system was undetectable, as I had no reason to suspect that my reminders for HHI's patent 5,784, 808 were deleted, and therefore the failure to timely pay the maintenance fee was unavoidable.

(B) I had in place a business routine for performance of the clerical function of updating my docket that could reasonably be relied upon to avoid errors in its performance (unfortunately, it was not foolproof, as I simply did not anticipate a total loss of all records relating to a patent from occurring - had, for example, the reminder for the 3rd maintenance fee remained, I believe that I would have noticed then that the reminder for the 2nd maintenance fee was missing);

I had in place a routine for performing the docketing that could reasonably be relied upon to avoid errors in its performance. My business routine for docketing deadlines comprised: i) when a new office action or other type of paper came in for a case of a particular client I reviewed it to determine if a response, such as a reply to office action, appeal, notification, fee payment or other action was due; ii) I then consulted the rules to calculate the due date for any such response; iii) I then opened up the docket program on my computer and did a search for that client's records in the "Client" field part of the database; iv) then among the records that came up I did a subsearch for the file number of that case in the "File" number field; v) the computer monitor then displayed all fields for that record, and from those shown I selected the "Due Date" field and entered the date that I had calculated, and also selected the "Action" field to make the appropriate change, such as changing "Reply to Office Action" to "Awaiting Office Action"; vi) in certain cases, such as issuance of a patent requiring periodic maintenance fees where multiple due dates were triggered, I entered all dates at the same time; vii) I then printed out a hard copy which showed all of the client's records, which I reviewed to verify that the due date was

correctly entered; viii) in the event there was an error, I repeated the foregoing steps iii) through vi) to correct the error, then I repeated the hard copy step of vii) to verify that the correction was properly done; ix) after any of the Office Action replies or other responses were taken on a case, I opened up the docket program, accessed the case's file record, and either deleted the record (for example, where the case was intentionally abandoned) or, if needed, selected the "Due Date" field to change the due date, such as where an extension of time was involved; x) from time to time I made a backup copy on a CD of the entire docket records in the event there should be a total loss of the docket due to computer crash or the like; xi) then later when I made another such copy of the docket records I discarded the previous one as I considered it to no longer be needed.

I rely on my docket to remind me of deadlines so that I can send letters to my clients. Because of the docketing error which caused the reminder for the 2nd maintenance fee to be absent from my docket, I did not send a letter to my client regarding the second maintenance fee (there is no such letter in my file, and I understand that my client received no such letter). It seems that in 2006 I did not see that the 2nd maintenance fee was due, and thus I did not pay the second maintenance fee (had I seen the reminder on my docket, I would have contacted my client for instructions to pay the fee - I would not have simply not paid the fee; had my client instructed me not to pay the fee, I would have made a note of those instructions in my file, and there is no such note in my file). Thus, the docketing error caused the second maintenance fee to not be paid. I believe that the failure to pay the second maintenance fee was unavoidable due to the docketing error.

Unfortunately, I have no way of which I am aware to track the changes to my docket to find out when the reminder was deleted. I did not anticipate a docketing error of this sort occurring, so I did not save old copies of my docket so that I could check them when an error of this sort was discovered. I discarded old copies of my docket after I confirmed that changes I intended to make were in fact made. Unfortunately, I did not think to check to make sure that changes that I did not intend to make were not made.

(C) I believe that I was sufficiently trained and experienced with regard to maintaining the docket that relying on myself to maintain the docket represented the exercise of due care.

When I moved from San Francisco to Florida, I semi-retired. I no longer have any secretarial or clerical staff to assist me. I perform all such functions myself. Thus, the error occurred while I personally was responsible for the docket. I believe that I was sufficiently trained and experienced with regard to the function of my docketing system that my reliance upon such training and experience represented the exercise of due care.

My training comprised:

a) First I closely read ProVue Development's database manual for the Panorama software which I intended to use for building the docket for my cases.

b) Then I had a meeting with the head docketing clerk of the Flehr, Hohbach, Test & Herbert law firm. At the meeting I was given an overview by the docketing clerk of the features used for the Flehr docket. The docketing clerk trained me by: i) explaining the Flehr docketing software features and how they were used; ii) explaining and showing me a due date Rule Listing which listed the procedure in making due date calculations for different types of office actions and other types of papers requiring due date inputs; iii) explaining the software program's different database fields that required entry of information for each new record to be entered; iv) showing me how to select on the computer the fields for the docket entries for each record to be modified; v) showing me how to make docket entries to add to or modify a record; vi) explaining the steps of reviewing each action or other paper from which the Rule Listing was consulted to select the required due date for entry; vii) explaining how to input the selected due date and other information into the proper fields; viii) explaining the procedure for printing out hard copies of newly entered records or of modified records and then reviewing the same for verification that the entries were correctly made; ix) explaining the daily review of the current docket to determine which record and its reply due date were to be noticed to the responsible attorney or other person in the firm; x) explaining in the case of issuance of a patent that entry of three

maintenance fee due dates were required to be entered at the same time; xi) explaining the step of determining whether action was taken in response to the due date, and if so to take the step of making the required deletion or appropriate reminder into the docket; xii) periodically making backup copies of the docket.

c) I also discussed with the firm's docketing clerk how the above features could be incorporated into my Panorama software program to build a docket for my individual clients.

d) I built a docket on my Panorama software incorporating the above features. Then for each of my clients I copied data on their cases which I was handling from the firm's docket and input the same into my Panorama software program. I then tested the resulting docket by printing out hard copies, which I compared to a hard copy of the same records from the firm's docket to verify accuracy.

I did the docketing system on my own, so there was no other supervision. Along with handling my docketing system, I also continued my law practice. Before this one error with the HHI patent '808, my docketing system has proven to be accurate. This is the first time that I discovered an error in my docketing system since the time I have been using it.

Through my practice as a patent attorney at the United States Patent and Trademark Office I have encountered events where the Patent Office has lost my filed responses or lost files for cases on which I worked. One example of this can be seen in the attached Exhibit K, which is a transaction file history listing of U.S. Patent No. 4,322,895 (Serial No. 06/101,708) which was issued to HHI in 1982. There are three separate times where the Patent Office documented losing the case, then finding it (it was found on 20 September 1994, 20 February 2001, and 13 August 2001, according to the attached listing). Thus, it appears that even a well-run agency as the U.S. Patent and Trademark Office can mistakenly lose something in the course of its business. It appears that the Patent and Trademark Office was not able to determine how the case got lost, as it got lost over and over (it seems that if the Office had determined how the case got lost, it would have implemented changes to prevent it from getting lost again). In the present

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September 11, 2009

case, I believe that my inability to determine how a docket entry got lost should not adversely impact my client, when as here I have been able to demonstrate that the loss of that entry was the proximate cause for the maintenance fee not being paid.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the patent.

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9/14/09
Date

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Exhibit K - Backus Supplemental Declaration, page 1 of 1



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06/101,708

STABILIZED ATHLETIC SHOE

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Transaction History

Date	Transaction Description
09-22-2001	Set Application Status
08-13-2001	Case Found
08-13-2001	Termination of Official Search
03-07-2001	Official Search Conducted
03-07-2001	Case Reported Lost
02-20-2001	Case Found
08-17-2000	Termination of Official Search
07-18-2000	Official Search Conducted
07-18-2000	Case Reported Lost
07-18-2000	Official Search Conducted
07-18-2000	Case Reported Lost
09-20-1994	Case Found
09-07-1994	Official Search Conducted
08-30-1994	Case Reported Lost
03-17-1992	Preexamination Location Change
04-20-1982	Balance of Issue Fee Paid
03-26-1982	Notice of Balance of Issue Fee Due (PTO-1031) - Billing Require
12-21-1981	Issue Fee Payment Verified
09-25-1981	Mail Notice of Allowance
09-25-1981	Notice of Allowance Data Verification Completed
09-02-1981	Date Forwarded to Examiner
09-02-1981	Withdrawal of Notice of Allowance
09-02-1981	Case Docketed to Examiner in GAU
01-23-1981	Mail Non-Final Rejection
01-23-1981	Non-Final Rejection
01-23-1981	Case Docketed to Examiner in GAU
01-23-1981	Application Dispatched from OIPE

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